AO 91 (Rev. 11/11) Criminal Complaint

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUL 12 2012

MATTHEW J. DYKMAN
CLERK

UNITED STATES DISTRICT COURT

for the

District of New Mexico

United States of America
v.
KIRBY CLEVELAND
and
TYRONE ELEANDO

Defendant(s)

Case No. 12-MJ-1324 KBM

AMENDED

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of May 14, 2012 in the county of McKinley in the District of New Mexico, the defendant(s) violated:

Code Section	*Offense Description*
18 U.S.C. § 1153	Offenses Committed within Indian Country.
18 U.S.C. § 113(a)(3)	Assault with a dangerous weapon.
18 U.S.C. § 2	Accessory.
18 U.S.C. § 13	Assimilation of State Laws.
30 N.M.S.A. § 30-16-4(A) and (C)	Aggravated Burglary, Armed with a deadly weapon, and Commits battery upon any person.

This criminal complaint is based on these facts:

While on the Navajo Indian Reservation defendants did willfully and knowingly assault Zerlena Begay with a baseball bat, committed Aggravated Burglary by entering the home armed with a deadly weapon and committing a battery therein.

☑ Continued on the attached sheet.

[signature]
Complainant's signature

Larry Etsitty, Sr. Criminal Investigator Navajo Nation
Printed name and title

Sworn to before me and signed in my presence.

Date: 7-12-12

[signature] Robert H. Scott
Judge's signature

City and state: Albuquerque, New Mexico

Robert Hayes Scott, U.S. Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	CASE NO: 12-MJ-1324 KBM
vs.	)	
	)	
KIRBY CLEVELAND and	)	
TYRONE ELEANDO.	)	

AFFIDAVIT
(In support or Amended Criminal Complaint and Warrant for arrest of TYRONE ELEANDO)

I, the undersigned being duly sworn, depose and state as follows:

1. I am a Criminal Investigator with Navajo Department of Criminal Investigation currently assigned to Crownpoint Police District, Church Rock Field Office, New Mexico.

2. I have 29 years of investigative experience with the Department of Criminal Investigation. Currently I have primary investigative responsibilities pertaining to major crimes on the Navajo Indian Reservation, including but not limited to homicides, vehicular homicides, aggravated assaults, and sexual assaults.

3. The information set forth in this Affidavit has been derived through my own investigative efforts, information communicated to me by other sworn law enforcement officers, or other reliable sources.

4. On May 14, 2012, Navajo Department of Criminal Investigation, Criminal Investigator Rosina Ford was contacted by Bessie Begay regarding a "Home Invasion" at her residence within the Casamera Lake Community, Casamera Lake, New Mexico. Bessie related that her daughter Zerlina Begay was a victim of an Assault during that incident and was transported by her father James D. Begay to the Crownpoint IHS for emergency care of blunt force injuries to her head and a human bite to her right index and ring fingers.

5. Investigator Ford interviewed Bessie L. Begay a Native American female, year of birth 1958, social security number 1413 at 1.5 mile southwest of Casamera Lake Housing at her residence on May 15, 2012. Including Zerlina Begay, Curtis Johnson and James D. Begay.

6. Bessie said earlier in the day on May 14, 2012 they went to the laundry in Gallup, New Mexico on their way back they stopped at her son's house, got water and returned home. She was home with

her daughter Zerlina Begay and Curtis Johnson her daughter's boyfriend. Zerlina was warming up pizza. The door was not locked at the time she thought her husband had returned when she heard the door open. Bessie was in her room when she heard Zerlina say "Get out!" She came out to the living room and saw blood on her daughter's forehead. Bessie went to her aid and pushed Kirby Cleveland, he hit her in the chest with his fist and she fell backward hitting the chair. She told him "I'm going to call the cops!" she got up and went to her room to do that. During that time she did not see what happened. She recalled Kirby saying, "You guys killed my brother. Where is Jerald?" She replied" It's just us woman here go to Mariano Lake."

7. James D. Begay Native American male year of birth 1955, social security number 4293 related at about 8:00 p.m. his son Jimmy Begay called and told him the Clevelands had attacked the women. He quickly returned to the house, when he got there his wife was crying, his daughter's face was bloody. Immediately he took her to ER in Crownpoint, New Mexico they were there until 1:00 a.m.

8. Earlier that day he saw a white Dodge pickup, usually driven by Kirby Cleveland, the windows are slightly tinted this truck was parked near Manuel McDonald's next to an extended cab charcoal gray pickup. He passed slowly and saw a tall guy take a black gun out and put it in the bed of the white Dodge pickup. He called Jimmy and told him about that.

9. Curtis Johnson Native American male, year of birth 1985, social security number 4633 said he and Zerlina were in the bedroom. They heard someone drive up outside, Zerlina went to the door opened it and they barged in. Saying "You killed my bro I'm looking for your brothers!" Zerlina told them "They are not here!" They were standing by the door, they got into a fight and they pushed them out. Curtis said he did not know these guys one was big and the other was small.

10. The second time they returned they kicked open the door and the big guy had a bat, Zerlina told them again to get out the big guy said "Fuck that!" she was standing by the door he swung at her with the bat and hit her. The guy was holding her head down by the hair she was bloody. She told her boyfriend Curtis, "Get something hit him!" He grabbed a poker, he hit him in the neck and head he struck both of them. Curtis grabbed one of them, kneed him and pushed him out the door. They closed the door, locked it, they tried coming in again. The two guys broke the car windows with a rake and the front window of the house with a metal pipe.

11. They yelled out that they had a gun, Curtis told everyone to stay in the house. The two got back in the white truck backed up, waited and slowly drove off. They parked at the turn off down the road and finally left. Curtis called the Navajo Police and told them what happened.

12. Zerlina Begay, Native American female, year of birth 1988, social security number 9141 said it was sun down around 8:00 p.m. they were ready to heat up mini pizzas. She heard a vehicle pull up the muffler had a bad noise her boyfriend looked out the front window and said it's a white truck. As she got to the door they barged in past the stove. Kirby said "You guys killed my bro!" Zerlina told

them "What the fuck you doing here, get out!" the other intruder said "Fuck that!" Kirby said again, "You guys killed my bro now I'm going to kill one of you!" Kirby hit her on the left side with a close fist. Then he hit her mom and she fell back on the rocking couch. Zerlina fought back holding on to the other intruder hitting him, she and her boyfriend manage to push them both out the door. She ran to her room to put on her boots. She was not sure what they were doing outside.

13. Zerlina heard them banging on the door then they were banging on her mother's truck, her mom cried out, "My truck! My truck!" She told her, "We have to stay in here, they might have a gun." She saw Kirby with a metal pipe he broke the front window and said, "You have a big mouth come out!" Then the other intruder kicked open the door and hit her twice in the face, she hit him back and pushed him out the door. He lost his balance and staggered into the grill.

14. All of a sudden Kirby hit her in the head, grabbed her by the hair, he had a bat and she felt the blood on her face. Then he bit her right hand, he would not let go she had to pull her fingers out of his mouth. At the same time she kept hitting him with her left hand. For the second time they were able to push him out and shut the door.

15. After Kirby and the other intruder left she told her mom they had to leave the house, her mom did not want to. Thinking the two would return they left and took refuge west of the house. Zerlina said during the attack she was really afraid, she thought they might have a rifle. "I just wanted to defend my mom, I was afraid one of us was going to die."

16. Zerlina was examined and treated at the Emergency Room, the laceration on her head was sutured with 7 stitches. She also received an antibiotic intravenous injection for the human bite on her two right fingers and underwent a head scan.

17. The identity of the other intruder (the individual that acted with Kirby) was initially believed to be Tyson Tolth. Further investigation by Investigator Ford revealed that the home invasion was committed by Kirby Cleveland and Tyrone Eleando. On June 27, 2012, Investigator Ford conducted an interview of Tyrone Eleando. During that interview Tyrone made numerous admissions that he, and he alone, was with Kirby before, during and after, Kirby drove to the Begay residence on May 14, 2012. Tyrone denied going into the residence. He stated that he "got drunk and blacked out." Tyrone went on to state that when he woke up he was at the Begay residence and Kirby was laying on the ground bleeding. Tyrone stated that he and Kirby left the Begay residence and Kirby dropped him off at his parents house. Tyrone recalled asking Kirby "Damn, what did you do?" He stated that Kirby did not respond.

18. In conclusion, Affiant submits there is probable cause to believe that on May 14, 2012, KIRBY CLEVELAND year of birth 1984, social security number ending in 5515, and an enrolled member of the Navajo Nation and TYRONE ELEANDO year of birth 1985 social security number ending in 6067, and an enrolled member of the Navajo Nation did willfully and knowingly in the District of New

Mexico, on Indian Reservation, Assault with a dangerous weapon to wit a baseball bat ZERLINA BEGAY in violation of 18 USC § 113(a)(3); 18 USC § 2, Accessory; 18 USC § 1153, Crime on Indian Reservation; 18 USC § 13 Assimilation of state law; NMSA 30-16-4(A) and (C), Aggravated Burglary consists of the unauthorized entry of any dwelling with intent to commit any felony or theft therein and the subjects were armed with a deadly weapon, to wit a baseball bat which when used as a weapon can inflict great bodily harm or death; and while in the commission of the burglary the subjects also committed a battery upon the person of ZERLINA BEGAY while in the home. This amended Complaint was approved by AUSA Jacob A. Wishard.

I swear or affirm that this information is true and correct to the best of my knowledge.

Respectfully submitted,

Larry Etsitty, Sr.
Criminal Investigator
Navajo Department of Criminal Investigation
Crownpoint, New Mexico

Subscribed to and sworn to/before
me on this 12 day of July 2012.

Robert H. Scott

Honorable ROBERT HAYES SCOTT
United States Magistrate Judge